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Chicago Regional Council of Carpenters and Complete Thermal Systems, Inc. and Operative Plasterers' and Cement Masons' International Association of America, Local Union No. 599 Case 30–CD–170

August 31, 2009

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). Complete Thermal Systems, Inc. (the Employer), filed charges on March 4, 2009, alleging that the Chicago Regional Council of Carpenters (Carpenters) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Operative Plasterers' and Cement Masons' International Association of America, Local Union No. 599 (Plasterers). The hearing was held on March 18 and 24, 2009, before Hearing Officer Andrew S. Gollin. Thereafter, the Carpenters and the Plasterers each filed a posthearing brief.

The National Labor Relations Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, we make the following findings.¹

I. JURISDICTION

The parties stipulated that the Employer, a Wisconsin corporation, is a contractor in the construction industry and performs work in the areas of insulation, fireproofing, plastering, and exterior insulation finishing systems out of its facility in Hartland, Wisconsin. They also stipulated that during the past calendar year, a representa-

tive period, the Employer purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of Wisconsin. The parties further stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Carpenters and the Plasterers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of Dispute

The Employer is a construction contractor performing work in the areas of insulation, fireproofing, plastering, and exterior insulation finish systems (EIFS). The Employer is signatory to the 2007–2010 Insulators' Agreement with Carpenters² and is also party to a collective-bargaining agreement between Plasterers and the Southeastern Wisconsin Drywall and Plastering Contractors Association effective June 1, 2008, through May 31, 2012.

The Employer employs 12 carpenters and 6 plasterers, according to Kurt Schmidt, the Employer's owner and president. Schmidt testified that he normally assigns insulation, soundproofing, and fireproofing work to carpenters. He normally assigns plaster systems and EIFS work to plasterers. Plaster systems include veneer plaster and plaster over metal lath, while EIFS consists of thin-coat plaster that also utilizes some insulation. Most of the work assigned to plasterers is done on the exterior of buildings. Schmidt testified that, over the past decade, about 27 to 30 percent of the Employer's work has been insulation, about 40 to 50 percent has been fireproofing, and about 30 percent has been plaster systems and EIFS.³

In October 2008, the Employer was hired to install fireproofing material at the St. Catherine's Hospital project in Pleasant Prairie, Wisconsin.⁴ Specifically, the Employer was contracted with to spray a product called Cafco Blaze-Shield II onto the structural steel and the roof deck. Blaze-Shield II is a dry, fibrous product that

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

² The Employer is also signatory to the 2007–2010 Insulators' Agreement with the Northern Wisconsin Regional Council of Carpenters

ters.

³ Schmidt testified that plaster work and EIFS work (identified as "work done by plasterers") was about 30 percent of the Employer's work. He also testified that plaster work, EIFS work, batt insulation, and rigid insulation together made up 50 percent of the Employer's work. Thus, we infer that batt and rigid insulation constituted 20 percent of the Employer's work (i.e., 50 percent minus 30 percent). Additionally, Schmidt testified that blown-in insulation was about 7 to 10 percent of the Employer's work. Thus, adding 20 percent and 7 to 10 percent, we find that total insulation work (batt, rigid, and blown-in) constituted 27 to 30 percent of the Employer's work.

⁴ This is the only work the Employer was contracted to perform on the St. Catherine jobsite.

is conveyed through a hose, mixed with water at the nozzle on the hose end, and sprayed through the nozzle onto the structure being fireproofed, according to Schmidt. Blaze-Shield II is typically applied by a three-person crew. One person loads the material into the hopper of a "Boss" or "Krendl" machine, another moves the hose through which the material flows from the machine to the spray nozzle, and a third operates the nozzle and sprays the material. Schmidt testified that the equipment and process used to apply Blaze-Shield II are the same equipment and process that his carpenters use to apply cellulose or fiberglass insulation in attics or to spray cellulose insulation in walls. Schmidt testified that he had five carpenters and no plasterers at the St. Catherine's jobsite. He estimated that the work would be completed in October 2009.

Plasterers Business Agent Randall Hink testified that he first discovered the Employer using workers other than plasterers to do fireproofing work in the summer of 2006 on a Northwestern Mutual Life job. At that time, Hink found two carpenters doing fireproofing work, and he signed them up as Plasterers.⁵ In October 2008, Hink learned that the Employer intended to use carpenters to do fireproofing at an Oak Creek Power Plant project. Hink testified that he met with Schmidt, Carpenters officials, and Milwaukee Building Trades Council leaders and was assured that plasterers would perform the fireproofing work.⁶ Finally, in February 2009, Hink learned that the Employer was using carpenters to do fireproofing at the St. Catherine Hospital project. After attempting to contact Schmidt, Hink filed a jurisdictional complaint, on February 20, 2009, with the Plan for Settlement of Jurisdictional Disputes in the Construction Industry (the Plan) regarding the Employer's fireproofing work on the St. Catherine's Hospital project.

On March 4, Carpenters Business Representative Keith Jutkins sent a letter to Schmidt, threatening to strike if the Employer reassigned any portion of the fireproofing work to Plasterers. On March 6, Richard Resnick, the administrator and counsel of the Plan, notified the parties that arbitrator Walter Kardy had been selected to hear the jurisdictional dispute. On March 11, Schmidt sent a letter to Kardy requesting that the arbitration be cancelled or postponed because he had been informed that Carpenters had not agreed to be bound by any determination made under the Plan. On March 12, Douglas McCarron,

President of the United Brotherhood of Carpenters and Joiners of America (UBCJA), notified Resnick by letter that the UBCJA objected to the arbitration, because UBCJA was not stipulated to the Plan and because the Employer's collective-bargaining agreement with Carpenters did not contain any provision regarding stipulation to the Plan.

Arbitrator Kardy held a hearing on the jurisdictional dispute on March 12. Plasterers and the UBCJA participated in the hearing. On March 14, Arbitrator Kardy issued a decision awarding the fireproofing work to Plasterers. He described the work awarded as "manning the spraying wand or lance of a machine used in the application of cementitious fireproofing material." In his decision, he noted that Carpenters were not stipulated to the Plan "[either] through the BCTD [or] an applicable local or regional or project agreement."

B. Work in Dispute

The parties stipulated that the work in dispute is the Employer's fireproofing work at the St. Catherine's Hospital jobsite in Pleasant Prairie, Wisconsin. However, Plasterers business agent Hink testified, and Plasterers' brief reiterates, that Plasterers claims only the work of the person who operates the nozzle and sprays the material, not the work related to cutting open the bags, placing them in the hopper, or operating the hose.

C. Contentions of the Parties

Plasterers concedes that there are competing claims for the work in dispute and that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. It contends, however, that the work dispute is not properly before the Board because the parties have an agreedupon method for voluntary adjustment of the dispute, as Carpenters as well as Plasterers vigorously participated in the arbitration of the dispute under the Plan. Assuming arguendo that the Board has jurisdiction under Section 10(k) to resolve the dispute. Plasterers contends that the work in dispute should be assigned to employees represented by Plasterers based on the factors of collective-bargaining agreements, area and industry practice, relative skills, and economy and efficiency of operations. Plasterers further contends that the Board should take Arbitrator Kardy's award into account.

Carpenters contends that there are competing claims for the disputed fireproofing work, reasonable cause to believe that 8(b)(4)(D) has been violated, and no agreed-upon method for voluntary adjustment of the dispute. As to the latter, Carpenters asserts that it is not bound to the jurisdiction of the Plan and did not waive its right to object to the jurisdiction of the Plan by the UBCJA's participation in the arbitration before Arbitrator Kardy.

⁵ Hink testified that the two were subsequently let go. It is not clear from the record whether they ever performed fireproofing work for the Employer.

⁶ Hink testified that he never followed up on the job. Schmidt testified that he used carpenters to perform the work.

⁷ All dates herein are in 2009, unless otherwise indicated.

Carpenters contends that the work in dispute should be assigned to employees represented by Carpenters based on the factors of employer preference and past practice, economy and efficiency of operation, relative skills, and collective-bargaining agreements.

The Employer filed no brief, but Schmidt testified at the hearing that the Employer prefers to continue to assign the work in dispute to its carpenter employees.

D. Applicability of the Statute

The Board may proceed with determining a dispute pursuant to Section 10(k) of the Act only if there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. This standard requires finding that there is reasonable cause to believe that: (1) there are competing claims for the disputed work among rival groups of employees; and (2) a party has used proscribed means to enforce its claim to the work in dispute. Additionally, there must be a finding that the parties have not agreed on a method for the voluntary adjustment of the dispute. On this record, we find that this standard has been met.

1. Competing claims for work

The parties stipulated, and we find, that there are competing claims for the work. Carpenters claimed the work in dispute for the employees it represents, and these employees have been performing the work. Plasterers claimed the work by filing a jurisdictional complaint with the Plan over the work on February 20.

2. Use of proscribed means

We also find that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. As described above, Carpenters Business Representative Jutkins sent a letter on March 4 to the Employer's president, Schmidt, threatening to strike if the Employer reassigned any portion of the fireproofing work to Plasterers. Plasterers does not dispute Carpenters' contention that Jutkins' letter constitutes reasonable cause to believe that Carpenters engaged in proscribed activity by threatening to strike. Moreover, no evidence was presented that Carpenters' threat to strike was not genuine. 9

3. No voluntary method for adjustment of dispute

We further find that there is no agreed-upon method for the voluntary adjustment of the dispute. It is well settled that all parties to a dispute must be bound if an agreement is to constitute an agreed method of voluntary adjustment. In the present case, Plasterers and the Employer are bound to the Plan for resolution of jurisdictional disputes under article X, section 3 of their collective-bargaining agreement, but Carpenters is not bound to the Plan. Carpenters' collective-bargaining agreement with the Employer addresses jurisdictional disputes in article XI but provides only that, in the event of a jurisdictional dispute, there shall be no work stoppage and that "the International Presidents of the Trades involved shall settle the jurisdictional dispute." Thus, Carpenters is not bound to the Plan through its collective-bargaining agreement.

Moreover, although Carpenters' parent, the UBCJA, participated in the hearing before Arbitrator Kardy, it at all times objected to the arbitration on the bases that the UBCJA had not stipulated to the Plan and the Employer's collective-bargaining agreement with Carpenters did not contain any provision regarding stipulation to the Plan. Indeed, in his decision, Arbitrator Kardy expressly noted that Carpenters was not stipulated to the Plan. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

There is no evidence of Board certifications concerning the employees involved in this dispute.

As indicated above, the Employer is subject to collective-bargaining agreements with both Carpenters and

⁸ Operating Engineers Local 150 (R&D Thiel), 345 NLRB 1137, 1139 (2005).

⁹ See Southwest Regional Council of Carpenters (Standard Drywall), 348 NLRB 1250, 1254 (2006) (absent affirmative evidence that a threat to take proscribed action is a sham or the product of collusion, the Board will find that it amounts to proscribed conduct under Sec. 8(b)(4)(D)).

¹⁰ Operating Engineers Local 150 (R&D Thiel), 345 NLRB at 1140; Retail Clerks International Association (Food Employers Council), 125 NLRB 984, 999 fn. 5 (1959) (arbitration procedure is ineffective unless all parties having an interest in the outcome of the work assignment dispute agree to be bound).

¹¹ Electrical Workers Local 357 (Western Diversified Electric), 344 NLRB 1239, 1240 (2005) (IBEW local not bound by the Plan, where its collective-bargaining agreement with the employer made no reference to the Plan); Laborers Local 242 (Johnson Gunite), 310 NLRB 1335, 1337 (1993) (no agreed-upon method for resolution of jurisdictional dispute, where the two unions' collective-bargaining agreements mandated different methods of resolution).

Plasterers. Carpenters' agreement with the Employer, the "2007–2010 Complete Thermal Systems Insulators' Agreement," does not specifically mention fireproofing. However, section 1.1 of article I, "Recognition and Prior Agreements," states: "The coverage of this Agreement shall be all bargaining unit work historically covered by this Agreement and normally performed by insulators over which the Employer has control." Carpenters' Business Representative Thomas Doleschy testified that, based on his experience negotiating the Insulators' Agreement since 1995 with the Employer and two other companies, "fireproofing was part of what we did." Additionally, Schmidt testified that, since its inception, the Employer has assigned fireproofing work to Carpenters.

Plasterers' collective-bargaining agreement with the Employer specifically lists fireproofing as one of the types of work performed by the bargaining unit under the contract's recognition clause, article II. Section 1(a) of that article states, in pertinent part:

All interior or exterior plastering, cement, stucco, stone, imitation, dryvit, sto, R-Wall, Sure-Wall and all other Outsulation materials, and all similar materials pertaining to the plastering industry or any patent material when cast, the setting of same, fireproofing, and also comer beads when stuck must be done by practical Plasterers of the O.P.&C.M.I.A.

Although the language of Carpenters' collective-bargaining agreement arguably covers the work in dispute, the language of Plasterers' agreement specifically claims such work. Accordingly, we find that the factor of collective-bargaining agreements slightly favors an award of the work in dispute to employees represented by Plasterers. See *Laborers Michigan District Council (Walter Toebe Construction Co.)*, 353 NLRB No. 114, slip op. at 3 (2009).

2. Employer preference

Schmidt testified that the Employer preferred to assign the disputed work to employees represented by Carpenters. Accordingly, this factor favors awarding that work to employees represented by Carpenters.

3. Employer practice (past and current)

The Employer's past practice is to assign fireproofing work to employees represented by Carpenters, and it did so on the St. Catherine's Hospital project.

Schmidt testified that carpenters performed fireproofing work at the companies for which he had worked from 1985 to 1995. Some of these carpenters came with

Schmidt and started the Employer in 1995. Thereafter, the Employer regularly assigned fireproofing work to its carpenter employees. Schmidt acknowledged that on about 10 of its approximately 380 fireproofing jobs since 1995, the Employer used plasterers to install some fireproofing material. However, according to Schmidt, this was when the Employer had more fireproofing work than its carpenter employees could do, and not enough work for its plasterers. In these instances, Schmidt assigned plasterers to do fireproofing work rather than lay them off because, if he had laid them off, he would later have had to hire and train new plasterers.

Accordingly, considering the foregoing, we find that the factor of current and past practice favors an award of the work in dispute to employees represented by Carpenters.

4. Area and industry practice

Schmidt testified that the Employer currently has two jobs, in addition to St. Catherine's, where it is using its carpenters to perform fireproofing work.

According to the testimony of Plasterers Business Agent Hink, and documentary evidence he presented, 16 of the 29 plastering contractors with which Plasterers has contracts perform fireproofing work. Lexcept for the Employer, all of the signatory contractors that do fireproofing use plasterers to perform the fireproofing work. Hink further testified that, based on conversations with Plasterers business agents in five locations across Wisconsin, Hink did not know of any other union contractor involved in fireproofing in the state of Wisconsin that did not use Plasterers to perform fireproofing work.

Carpenters Business Representative Doleschy testified that, of the three insulating contractors with which Carpenters has collective-bargaining agreements, the Employer is the only one that performs fireproofing.

Accordingly, we find that the factor of area and industry practice favors an award of the work in dispute to employees represented by Plasterers.

5. Relative Skills

Carpenters presented evidence that the Employer's carpenter employees possess the necessary skills for applying the fireproofing material due to years of on-the-job training they have received while employed with the Employer. Schmidt testified that it takes from 1 to 2 years to become proficient in applying the fireproofing material because proper installation requires applying the correct thickness of the material to each structure. The

¹² Schmidt additionally testified that these companies—Milwaukee Insulation and Thermal Masters—have ceased operations.

¹³ By "fireproofing," Schmidt meant any of the three jobs involved, not necessarily the one in dispute here. Schmidt testified that none of these 10 instances occurred in the last 5 years.

¹⁴ Seven of these contractors perform only fireproofing work. The other nine perform both fireproofing and plastering work.

Employer's carpenters use gauges to check thickness of the fireproofing material applied. Schmidt testified, however, that "a guy who's good . . . can pretty much spray all day and then go back and check his thicknesses and he's gonna be right there. Just from doing it over and over, you get the feel for how . . . quick you can move the material along to get the certain thicknesses." Moreover, the Employer's carpenters install insulation as well as fireproofing material. Because the same machines are used both for blowing insulation and applying fireproofing material, the Employer's carpenters are skilled in operating the equipment used for fireproofing.

Plasterers Business Agent Hink testified, as indicated above, that Plasterers provided 15 contractors with plasterers to do fireproofing work. Additionally, in Hink's four-county area, half of the 82 plasterers performed fireproofing work.¹⁵ He has been unable to provide a plasterer to do fireproofing when requested by a contractor only two or three times in his 12 years as a business agent. He testified that Schmidt never asked him to provide plasterers to do fireproofing. 16 Plasterers introduced documentary evidence showing that the Plasterers' apprenticeship program, which is certified by the Wisconsin Department of Workforce Development (WDWD), includes training in fireproofing and lists fireproofing as one of the tasks done by plasterers. Carpenters' apprenticeship program certified by WDWD does not include fireproofing in its list of tasks done by carpenters, nor does it provide training in fireproofing.

The record shows that employees represented by both unions have the skills and training necessary to perform the work in question. Accordingly, we find that this factor does not favor an award to either group of employees. See, e.g. *Operating Engineers (R&D Thiel)*, supra at 1141.

6. Economy and efficiency of operations

Schmidt testified that the economy and efficiency of the Employer's operations would be negatively affected if it were required to use plasterers to perform fireproofing work. He asserts that he would have to train his plasterers to do fireproofing, and it would take 1 to 2 years for them to become good at it. Schmidt further testified that the Employer would suffer financially if required to use plasterers to perform fireproofing work, because Plasterers' wage and benefit package is more costly than Carpenters' wage and benefit package. The Employer bid the St. Catherine's Hospital project using Carpenters

wages. Thus, being required to use plasterers to perform the work would have a negative financial effect on the Employer.

Plasterers contends that the Employer can efficiently use plasterers to perform the disputed work. Noting that fireproofing is the largest part of the Employer's work and that insulating is the smallest, Plasterers asserts that it is not plausible that the Employer's total work is driven by the need to efficiently use carpenters who perform the insulating. Nothing precludes the Employer from continuing to use carpenters to work in the three-person teams with a plasterer, who would operate the nozzle applying the fireproofing material. Plasterers contends that the Employer's refusal to ask Hink for plasterers qualified to do fireproofing is merely an effort to undercut Plasterers' wages, rather than achieve any particular operating efficiency.

Initially, the fact that Plasterers' contractual wage and benefit package is more costly than Carpenters' wage and benefit package is not relevant to our analysis. Southwest Regional Council of Carpenters (Standard Drywall), 346 NLRB 478, 483 (2006). "[I]t is the Board's practice not to rely on the differing rate of pay of employees in determining a jurisdictional dispute." Id., quoting Painters Local 91 (Frank M. Burson, Inc.), 265 NLRB 1685, 1686 (1982).

Nor are we persuaded by Schmidt's testimony that it would cost the Employer substantially more than was contemplated when bidding for the St. Catherine job, if it was required to use plasters for the disputed fireproofing work. There is "scant evidence" to support Schmidt's claim. See, generally, *Mine Workers (Energy West)*, 304 NLRB 107, 109–110 (1991). To the contrary, Plasterers represents employees qualified to perform the Employer's fireproofing work, and it asserts it can provide the Employer with plasterers with that experience. In these circumstances, we find that this factor does not favor awarding the work in dispute to either group of employees. See generally *Machinists Lodge 776 (Lockheed Martin)*, 352 NLRB 402, 404 (2008).

7. Job loss

The Board will consider job loss when making an award of the work in dispute. See, e.g., *Bakery Workers Local 6 (Bachman Co.)*, 337 NLRB 407, 410 (2002); *Iron Workers Local 40 (Unique Rigging*), 317 NLRB 231, 233 (1995). Schmidt testified that if the Employer were required to use plasterers to perform fireproofing work, he would have to lay off some of his carpenters, because he does not have enough insulation work to keep them going full time. We therefore find that the factor of job loss favors awarding the work in dispute to employees represented by Carpenters.

¹⁵ Hink's area included the counties of Milwaukee, Waukesha, Washington, and Ozaukee.

¹⁶ Although Schmidt testified that he had one plasterer perform fireproofing work that was deficient, he admitted that he never told Plasterers that he wanted plasterers who were trained in fireproofing.

CONCLUSIONS

After considering all the relevant factors, we conclude that employees represented by Carpenters are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference, employer practice, and job loss. Thus, there are three factors in favor of an award to Carpenters-represented employees. Among those factors is employer preference, which, under well-settled precedent, is entitled to substantial weight. See *Iron Workers Local 1 (Goebel Forming)*, 340 NLRB 1158, 1163 (2003). Tonsequently, we find that these factors outweigh the factors that favor an award of the work to Plasterers-represented employees—area practice and collective-bargaining agreements, the

¹⁷ In a few cases, the Board, under unusual circumstances, has declined to accord substantial weight to the factor of employer preference. Those cases differ significantly from the present case. In Graphic Communications International Union, Local 508M (Jos. Berning Printing Co.), 331 NLRB 846 (2000), the Board discounted the employer's preference because it was not based on any of the traditional factors that the Board uses in making an award of disputed work but, rather, was based on the employer's decision to place a newly hired employee in what it perceived to be a "stronger, better union." The Board found that, "under these unique circumstances," the employer's preference did not support an award of the disputed work to the union that the employer preferred. In the present case, by contrast, the Employer's preference that fireproofing work be done by employees represented by Carpenters is based on its past practice of having such employees perform fireproofing work and by the job loss resulting if that work were assigned to other employees.

In Upholstery Division Local 3-U, United Steelworkers (Greyhound Exposition Services), 302 NLRB 416 (1991), the Board declined to give substantial weight to the employer's preference for assignment of the disputed work, because the employer's stated preference was at odds with both its long-established practice and its current assignment of the work. In the present case, the Employer's preference that the work be performed by employees represented by Carpenters is consistent with its established practice and its current assignment of the work.

In *Ironworkers, Local 380 (Stobeck Masonry)*, 267 NLRB 284 (1983), the Board acknowledged the well-settled principle that employer preference is normally accorded considerable weight, but noted that such weight was not warranted in the particular circumstances of that case. First, the dispute there was over a new production process that was unlike work the preferred employees previously had performed. Second, "employer preference" was the only factor that favored the employer's preferred employee work force. Here, conversely, the Employer's preference concerns an established work process and is accompanied by other factors that favor the award of work to the Employer's Carpenter-represented employees.

Additionally, in *District No. 15, Machinists (Hudson General Corp.)*, 326 NLRB 62, 67–68 (1998), where the Board awarded the work in dispute to Machinist-represented employees based on the factors of employer preference, past practice, and economy and efficiency, then-Member Liebman dissented. She found that only employer preference supported an award to Machinist-represented employees and that, under Board precedent, employer preference is not controlling when unsupported by other factors. In contrast to *Hudson General*, however, the Employer's preference in the present case is supported by other factors—employer practice and job loss.

latter of which favors Plasterers only slightly. ¹⁸ In making this determination, we are awarding the work to employees represented by the Chicago Regional Council of Carpenters, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Complete Thermal Systems, Inc., represented by the Chicago Regional Council of Carpenters, are entitled to perform fireproofing work at the St. Catherine's Hospital project, Pleasant Prairie, Wisconsin.

Dated, Washington, D.C. August 31, 2009

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹⁸ Carpenters Local No. 171 (Knowlton Construction), 207 NLRB 406, 409 (1973), cited by Plasterers, does not require a different result. There, the Board awarded the disputed work to carpenters, based on area practice and relative experience, where the employer's assignment of the work to laborers was supported only by their lower wage scale. Here, our award is based not only on the Employer's preference and assignment, but also on its long-established practice in the area and on the fact that some carpenters would be laid off if the disputed work were reassigned to plasterers.